



June 25, 2021

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Submitted vi EPA FOIA Submission Website at <https://www.foiaonline.gov>

**RE: Freedom of Information Act and Fee Waiver Request: Records
Related to Administrative Order on Consent, Docket No. CWA-
309(a)-20-006**

Dear EPA FOIA Officer:

The following Freedom of Information Act (“FOIA”) request is submitted by the Environmental Defense Center (“EDC”) regarding records related to the U.S. Environmental Protection Agency’s (“EPA”) Administrative Order on Consent in the matter of City of Lompoc, California, Docket No. CWA-309(a)-20-006 (“AOC”), effective on September 2, 2020. The City of Lompoc Regional Wastewater Reclamation Plant (“Plant”), located at 1801 West Central Avenue, Lompoc, CA 93436, is associated with National Pollution Discharge Elimination System (“NPDES”) Permit CA 0048127.

EDC is a California public benefit, non-profit law firm that works to protect and enhance the local environment of Ventura, Santa Barbara, and San Luis Obispo Counties through education, advocacy, and legal action. One of EDC’s core program areas is Clean Water, and EDC is concerned about the threats posed to human health and the environment due to NPDES permit violations from publicly owned treatment works, including the Plant, which has a history of chronic toxicity exceedances and violations of receiving water limitations.

REQUEST FOR RECORDS

Consistent with EDC’s mission and FOIA, 5 U.S.C. § 552 *et seq.*, we respectfully request the following records¹ from EPA, including both EPA’s headquarters and Region 9, dating from September 2, 2020, to the present:

¹ As used throughout this letter, the terms “record” and “records” shall include but not be limited to all handwritten, typed, or electronic writings (including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, calendar or daily entries, agendas, notices, telefaxes, and social media), photographs, power point presentations, and video.

1) Any and all records, including correspondence, emails, letters, or compliance reports, pertaining to the AOC between the City of Lompoc and EPA.

This request is submitted for noncommercial purposes.

We look forward to your reply within **twenty working days** as required by FOIA, 5 U.S.C. § 552(a)(6)(A)(i). We request that responsive records be provided in **electronic, PDF format**.

REQUEST FOR FEE WAIVER

EDC requests that EPA waive all fees in connection with this request pursuant to FOIA's two-part test: (1) disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (2) disclosure of the information is not primarily in the commercial interest of the requester. U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). FOIA, in general, carries a presumption of disclosure; moreover, the fee waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as EDC access to government documents without the payment of fees. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (fee waiver amendment is to be "liberally construed in favor of waivers for noncommercial requesters . . . The amendment's main purpose was to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA.") (internal citations omitted) (*citing* 132 Cong. Rec. S14298 (Sept. 30, 1986) (statement of Sen. Leahy); *see also Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986) (fee waiver provision "added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in clear reference to requests from journalists, scholars, and, *most importantly for our purposes, nonprofit public interest groups.*") (internal quotations and citations omitted) (emphasis added).

As shown below, EDC meets the test for a fee waiver because the disclosure of the information is "[i]n the public interest because it is likely to contribute significantly to public understanding of government operations or activities" and is "[n]ot primarily in [EDC's] commercial interest...." 40 C.F.R. § 2.107(l)(1).

In addition, this request meets the criteria set forth in 40 C.F.R. § 2.107(l)(2)(i)-(iv).

1. The records concern the operations or activities of the Federal government.

The subject of this request concerns records related to EPA's AOC. The AOC was entered into voluntarily by EPA and the City of Lompoc.

2. **The disclosure is likely to contribute to public understanding of the Federal government operations or activities.**

(i) The contents of the records are meaningfully informative.

This requested information will contribute to the public's understanding of the EPA's monitoring and reporting requirements under the AOC as well as the City of Lompoc's compliance with the provisions in the AOC, which is information not currently in the public domain. In particular, the request concerns the specified measures and actions in the AOC mandated by the EPA and agreed to by the City of Lompoc to cease current violations and prevent additional violations of the NPDES permit.

(ii) The records are logically connected to the government operations or activities.

This request is focused on the disclosure of records concerning the requirements under the EPA's AOC. Therefore, the records are directly and logically connected to EPA's action.

(iii) Disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to my individual understanding.

There is public interest in this subject. This request is submitted by EDC, which is a non-profit public interest organization. We have more than 3,000 members who are interested in our work, especially regarding our clean water program area. Accordingly, disclosure of the records will "contribute to the understanding of a reasonably broad audience of persons interested in the subject" and not just to my individual understanding.

(iv) EDC's identity, vocation, qualifications, and expertise regarding the requested information, and how EDC plans to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject matter.

EDC is a public interest non-profit organization, and EDC will supply the information not only to our members, but also to any other local or regional organizations interested in this matter, as well as the general public.

- (v) EDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject.

EDC will disseminate the information obtained from this request through one or more of the following: newsletters; public presentations; news stories; and policy, academic, or advocacy papers contributed to or written by EDC. In addition, EDC distributes information widely through social media including our website, emails, Twitter, and Facebook. EDC and our partners will also be able to disseminate the information to a broad range of persons.

3. **Disclosure of the requested information is likely to contribute to the understanding of a reasonably broad audience or persons interested in this subject, as opposed to my individual understanding.**

- (i) The information being requested is new.

The information is new to the public's knowledge about the measures and activities undertaken by the City of Lompoc to comply with the provisions under the AOC. EDC and our supporters, and the broader public, are interested to learn what steps the City of Lompoc has taken to cease current violations and prevent additional violations of the NPDES permit. Additionally, records responsive to this request may explain why there have been delays in the execution of the requirements under the AOC.

- (ii) The information is not being requested to confirm or clarify data that has been released previously.

The requested information has not been disclosed publicly, nor has any data been previously released that would be confirmed or clarified by this request. In a letter dated June 23, 2021, Marcela von Vacano, Assistant Regional Counsel for the EPA, denied an informal request for records made by EDC's counsel and instructed that the request for records must be formally submitted "using a method that EPA's Freedom of Information Act (FOIA) regulations" authorizes.²

- (iii) Disclosure will increase the level of public understanding of the operations or activities of the Federal government over that which existed prior to disclosure.

Neither EPA nor the City of Lompoc has released information about the activities undertaken by the City pursuant to the AOC compliance, monitoring, and reporting requirements. Accordingly, the information

² Letter from Marcela von Vacano, Assistant Regional Counsel for EPA, to Michael R. Lozeau, Lozeau Drury LLP, (June 23, 2021).

“will increase the level of public understanding of the operations or activities” of the EPA’s AOC over that which exists prior to disclosure.

(iv) The information is not already publicly available.

EPA has not already made this information public. EPA instructed counsel for EDC that disclosure of the requested records would require submittal of a FOIA request pursuant to one of the methods authorized by EPA’s FOIA regulations.³ Therefore, disclosure will provide an informational benefit to the interested public that does not already exist.

4. **The public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.**

The public’s interest in this issue remains significant. Because this information is not available publicly, disclosure in response to this request will enhance the public’s understanding to a significant extent.

In addition, EDC does not possess any commercial interest in this matter such that disclosure is not “primarily in the commercial interest of the requester,” in accordance with 40 C.F.R. § 2.107(l)(3)(i)-(ii). EDC is a public interest organization who will not realize any commercial use or gain through the acquisition or dissemination of this information.

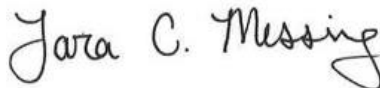
CONCLUSION

Thank you for your consideration of this request for records and fee waiver. Please send responsive records to TMessing@EnvironmentalDefenseCenter.org.

We have endeavored to craft this request in as focused and efficient manner as possible. **If it is not possible to provide the requested information within twenty working days, please prioritize the period from January 1, 2021 – present date.**

Should you wish to discuss the scope of this request, or have any questions, please contact me at (805) 963-1622, x104.

Sincerely,



Tara C. Messing
Staff Attorney

³ *Id.*